Nadchatiram Realities (1960) Sdn Bhd (In liquidation) & Anor v Mahadevi a/p Nadchatiram & Anor

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N–02–207 OF 1997

SHAIK DAUD, ABDUL MALEK AHMAD AND DENIS ONG JJCA

24 SEPTEMBER 1998

Civil Procedure *— Judgment and orders — Consequential orders — Federal Court remitted case to High Court for determination of consequential orders — Dispute as to what Federal Court meant — Motion filed to Federal Court to clarify its order — Parties signed draft consequential order and approved by judge — Whether consequential orders could be made without going through a trial on orders and reliefs granted*

The first respondent brought an action by way of an originating summons against the appellants on the ground that the first appellant held a piece of land in trust for her. The appellants in turn filed a civil suit against the first respondent for a declaration that the trust was void. The two actions were consolidated and the validity of the trust was heard first. At the end of the trial, the court found that the trust was valid. The appellants' appeal to the Federal Court was dismissed and the Federal Court remitted the matter to the High Court for the judge to determine consequential orders. At the resumption of proceedings in the High Court on 11 April 1997, a dispute arose as to the Federal Court's order. The appellants sought for an adjournment and filed a motion to the Federal Court for a clarification of its order. The matter was then adjourned to 5 May 1997 pending the Federal Court's disposal of the motion filed where the respondents produced a draft order for consequential orders sought which was signed by both parties and was subsequently approved by the judge. The appellants then filed this appeal contending that the judge did not consider all the prayers in the originating summons fully and that the judge did not conduct any trial on the orders and reliefs granted, and that no written judgment was delivered.

Held, dismissing the appeal with costs:

The facts showed that the High Court was prepared to resume hearing on 11 April 1997 pursuant to the Federal Court order dated 30 October 1996 but the appellant requested for an adjournment to 5 May 1997 pending the disposal of the clarification motion in the Federal Court. The draft of the consequential orders sought was then tendered and no objections were raised by the appellants thereby giving the impression to the court that they approved the draft order and the judge duly approved the draft. As such, there was no necessity for the hearing to resume and the learned judge rightly did not proceed further as he had before him a draft order agreed to by both parties (see pp 127H–128A).

A **[Bahasa Malaysia summary**

Responden pertama telah membawa tindakan melalui saman pemula terhadap perayu-perayu di atas alasan bahawa perayu pertama telah memegang sebidang tanah secara amanah untuknya. Perayu-perayu pula memfailkan guaman sivil terhadap defendan pertama untuk
B suatu deklarasi bahawa amanah tersebut adalah batal. Kedua-dua tindakan telah disatukan dan kesahan amanah tersebut telah didengar. Di akhir perbicaraan, mahkamah mendapati bahawa amanah tersebut adalah sah. Rayuan perayu-perayu ke Mahkamah Persekutuan telah ditolak dan Mahkamah Persekutuan telah menghantar semula perkara tersebut kepada hakim Mahkamah
C Tinggi untuk menentukan perintah-perintah berbangkit. Semasa penyambungan prosiding di Mahkamah Tinggi pada 11 April 1997, suatu pertikaian timbul berkenaan dengan perintah Mahkamah Persekutuan tersebut. Perayu-perayu telah meminta penangguhan dan memfailkan usul ke Mahkamah Persekutuan untuk menjelaskan
D perintahnya. Perkara tersebut telah ditangguh kepada 5 Mei 1997 sementara menunggu Mahkamah Persekutuan menentukan usul yang difailkan di mana responden-responden mengemukakan deraf perintah untuk perintah-perintah berbangkit yang dipohon yang telah ditandatangani oleh kedua-dua belah pihak dan kemudian diluluskan oleh hakim. Kemudian perayu-perayu memfailkan rayuan ini
E menegaskan bahawa hakim tidak mempertimbangkan semua permohonan-permohonan di bawah saman pemula secara penuh dan bahawa hakim tidak menjalankan sebarang perbicaraan di atas perintah-perintah dan relif yang diberikan, dan bahawa tiada penghakiman bertulis telah diberikan.

F **Diputuskan,** menolak rayuan tersebut dengan kos:

Fakta-fakta menunjukkan bahawa Mahkamah Tinggi telah bersedia untuk menyambung semula perbicaraan pada 11 Ogos 1997 menurut perintah Mahkamah Persekutuan bertarikh 30 Oktober 1996 tetapi
G perayu telah memohon untuk penangguhan sehingga 5 Mei 1997 sehingga penyelesaian usul penentuan di Mahkamah Persekutuan. Deraf perintah-perintah berbangkit yang dipohon kemudian dikemukakan dan tiada bantahan-bantahan telah dibangkitkan oleh perayu-perayu dan oleh itu memberikan pandangan kepada mahkamah bahawa mereka telah meluluskan deraf perintah dan maka
H hakim tersebut telah meluluskan deraf tersebut. Dengan itu, tiada keperluan untuk perbicaraan disambung semula dan hakim yang arif tidak meneruskan selanjutnya oleh kerana beliau mempunyai perintah deraf yang dipersetujui oleh kedua-dua pihak (lihat ms 127H–128A).]

I **Notes**

For a case on consequential orders, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) para 2744.

Appeal from: Civil Suit No 22–34 of 1991 (High Court, Seremban) A

RR Sethu (*S Satharuban* with him) (*Satha & Co*) for the appellants.
KS Narayanan (*Saranjit Singh* and *Mahadevi a/p Nadchatiram* with him) (*Mahadevi Badchatiram & Partners*) for the respondents.

Cur Adv Vult B

Shaik Daud JCA (delivering judgment of the court): This appeal came up for hearing before us on 23 September 1998 and we reserved our decision whereby on 24 September 1998, we dismissed the appeal with costs. In order to appreciate our dismissal of this appeal, it is pertinent for us to set out in detail the events which led up to this appeal. C

Nadchatiram Realities (1960) Sdn Bhd a company incorporated on 10 November 1960 by the late Mr Nadchatiram s/o Muttucumaru and Madam Kanala Devi Nadchatiram, was compulsorily wound up on 5 September 1989 in the Seremban High Court. On 1 August 1990 the first respondent Mahadevi a/p Nadchatiram, as plaintiff, issued an Originating Summons against the second respondent Jegadevan a/l Nadchatiram for D delivery of the title in respect of land held under certificate of title No 16143 Lot No 2484 Mukim of Rasah, Seremban, the memorandum of transfer issued on 16 May 1980 by the first appellant and the original declaration of trust created on 16 May 1980 by the late Mr Nadchatiram s/o Muttucumaru on the ground that the first appellant held the subject land in E trust for her.

The second appellant, a shareholder of the first appellant applied and was added as an intervener on 4 February 1991. Subsequently the first respondent amended the originating summons to add the first appellant (in liquidation) as a co-defendant. The order was granted on 27 September 1991. F

The second appellant caused the first appellant to file a civil suit against the first respondent to declare null and void the declaration of trust.

On 23 December 1991, the Seremban High Court ordered the consolidation of the originating summons and the civil suit and both to proceed as one action and to be tried simultaneously. G

The hearing of this consolidated matter commenced in the Seremban High Court on 30 September 1992. At the adjourned hearing on 22 February 1993 at the behest of learned counsel for the first respondent and agreed to by the learned counsel for the appellant, the originating summons in respect of the validity of the declaration of trust was to be heard H first. Both parties agreed that the hearing be confined to the issue of the validity of the declaration of trust, as a preliminary issue. Thereafter the trial proceeded accordingly.

At the conclusion of the trial on 29 March 1994, the learned judge declared the trust to be valid. Not being satisfied with the learned judge's order, the appellants appealed to the then Federal Court on the same day ie I 29 March 1994. The appeal was heard in the Federal Court and dismissed on 30 October 1996 but the Federal Court remitted the matter back to the

A same High Court judge 'untuk menentukan perintah berbangkit dalam guaman sivil dan guaman pemula' (to determine consequential orders raised in both the civil suit and the originating summons). There then arose a serious dispute as to what actually the Federal Court meant when it remitted the matter to the High Court, with the appellants contending that there ought to be a trial on the remaining issues while the respondents B contending that the Federal Court remitted the matter back for determination of the consequential issues only. This finally resulted in the appellants filing a motion in the Federal Court on 24 April 1997 for a clarification of its order dated 30 October 1996. The motion came up for hearing in the Federal Court on 24 November 1997 but was adjourned until C the disposal of the present appeal.

Before the resumption of hearing in the High Court, the appellants filed an application on 17 March 1997 in the consolidated proceedings to amend the counterclaim in the suit. This resulted in several fresh affidavits being filed by both parties. Then again on 27 March 1997, the appellants filed an application for a stay of hearing of the consolidated proceedings pending the D clarification of the Order in the Federal Court. This too resulted in several affidavits from both parties.

Finally on 11 April 1997 the proceedings resumed in the High Court before the same judge. At the request of the appellants the resumed hearing was adjourned pending the disposal of the clarification motion in the E Federal Court. At the adjourned hearing on 5 May 1997 the appellants wanted the two summonses-in-chambers, ie the amendment and the stay to be heard first. The learned judge refused to do so declaring that he was sitting pursuant to the order of the Federal Court dated 30 October 1996 requiring him to determine the consequential orders in the consolidated suit.

F Consequently, learned counsel for the respondent handed to the court a draft of the consequential orders sought. The learned judge's notes show that the appellant did not object to the draft order and it was recorded that both parties signed the draft order. Consequently, the learned judge approved the draft order.

G Now those are the salient events which led up to this appeal. Learned counsel for the appellants argued that at the hearing of the consequential orders, the learned judge did not consider all the prayers in the originating summons fully and that the learned judge in fact did not conduct any trial on the orders and reliefs granted, and that no written judgment was H delivered.

On our scrutiny of the notes of the learned judge, we found that he was in fact prepared to resume hearing on 11 April 1997 pursuant to the Federal Court order dated 30 October 1996 but the appellant requested an adjournment to 5 May 1997 pending the disposal of the clarification motion in the Federal Court. Then came 5 May 1997 and before the hearing could I resume or at the commencement of the hearing, a draft of the consequential orders sought was tendered. Most important of all, no objections were raised by the appellants. They remained silent thereby giving the impression

to the court that they approved the draft order. Consequently, the learned judge approved the draft. In the light of this there was no necessity for the hearing to resume and the learned judge rightly did not proceed further. He had before him a draft order agreed to by both parties. In the circumstances, we see nowhere did the learned judge erred. We found no merit in the appeal and accordingly dismissed it with costs. We ordered the deposit to go to the respondent to the account of costs.

Appeal dismissed with costs.

Reported by Chin En Tek